Motion for Leave to File Brief *Amicus Curiae*

The American Bar Association respectfully moves for leave to file the annexed Brief *Amicus Curiae* in support of affirmance, in accordance with Rule 42.

This motion was not made prior to August 15, 1972 (the extended date for the filing of Appellees' briefs), for the following reasons:

The constitutionality of the Act for the Extension of Admiralty Jurisdiction (hereinafter "Admiralty Extension Act"), 46 U.S.C. § 740, adoption of which had been actively supported by the Association, was attacked by Appellants for the first time in their Brief in this Court, filed June 15, 1972. Shortly thereafter, the attack came to the attention of the Association's Standing Committee on Admiralty and Maritime Law, which recommended that the Association move for leave to file a brief *amicus curiae*. However, it was impossible to obtain approval of this course of action until the next regular meeting of the Association's Board of Governors, scheduled to commence August 10, 1972 at San Francisco. At this meeting, after due deliberation, the Board of Governors authorized the present action.

In an effort to avoid moving for leave to file, the consent of counsel for all parties of record was requested by letter. All consented save counsel for Appellants, who gave notice of their refusal by letter dated August 22, 1972. A copy of that letter is annexed.

The American Bar Association, the national association of the legal profession, is composed of more than 157,000 attorneys. Its Standing Committee on Admiralty and Maritime Law is composed of the signatories to the annexed Brief. The Association and its members are vitally interested in the outcome of this appeal because of Appellants' attack upon the constitutionality of the Admiralty Exten-

sion Act, 46 U.S.C. § 740, legislation which had been actively supported by the Association for at least 10 years prior to its enactment in 1948, and because of the Association's continuing concern for uniformity in the law.

The Association is in agreement with the position taken herein by Appellees and, as *amicus curiae,* by the Maritime Law Association of the United States, and wishes to file the short brief annexed hereto because only this Association, as the most broadly based national organization of attorneys, is in a position to state the concern of the national bar for the preservation of the uniformity and harmony of the maritime law.

This appeal presents basic and far-reaching questions concerning the legislative powers of the states in the maritime area, and Movant respectfully submits that the filing of the annexed Brief *Amicus Curiae* under Rule 42 would assist in the fullest development of the issues.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1972

No. 71-1082

REUBEN O'D. ASKEW, *et al.*,

Appellants,

against

THE AMERICAN WATERWAYS OPERATORS, INC., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF OF THE AMERICAN BAR ASSOCIATION AS *AMICUS CURIAE*, IN SUPPORT OF AFFIRMANCE

The American Bar Association ("the Association") respectfully submits this Brief as *amicus curiae* in support of affirmance of the decision of the United States District Court for the Middle District of Florida,[1] declaring the Florida Oil Spill Prevention and Pollution Control Act[2] unconstitutional and enjoining its enforcement. The Association adopts the statement of the Question Presented contained in the Brief of the Maritime Law Association of the United States, as *amicus curiae* (pp. 1-2).

[1] 335 F.Supp. 1241; A39-55.

[2] Ch. 70-224, Laws of Florida, 1970; A56-73.

Interest of *Amicus Curiae*

The Association is the national association of the legal profession, with a current membership of more than 157,000 attorneys, and has among its committees a Standing Committee on Admiralty and Maritime Law. The Association has working relationships with numerous governmental agencies, as well as with every state and local bar association throughout the country. The Association acts in cooperation with many other professional and civic organizations in seeking ways to improve the effectiveness of the law, and efficiency and fairness in the administration of justice.[3] Thus, it has from time to time recommended improvements in the maritime law and the rules of practice governing admiralty cases, and a number of its recommendations have been adopted by Congress and by this Court.

In 1928, the Association, acting in cooperation with the Maritime Law Association of the United States, advocated legislation remedying the inequities resulting from the then existing case law whereunder the federal district courts, as courts of admiralty, lacked jurisdiction of suits for injuries caused by vessels to persons and property ashore, including bridges, piers and other extensions of the land. See 63 A.B.A. Reports 147, 210 (1938). The Association continued to support such legislation until it was fully adopted in 1948 as the Act for the Extension of Admiralty Jurisdiction[4] (hereinafter "Admiralty Extension Act"). *See* 66 A.B.A. Reports 147, 219-20, 412, 418-19 (1941); 68 A.B.A. Reports 150, 189, 195 (1943); 70 A.B.A. Reports 11, 214, 216 (1945), and *see* 1948 U.S. Code Cong. Serv., p. 1899.

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[3] See Jaworksi, *The American Bar Association: A Quasi-Public Institution,* 58 A.B.A.J. 917 (Sept., 1972).

[4] 46 U.S.C. § 740.

In advocating such national legislation in the maritime field, the Association has consistently supported the principle underlying the Admiralty Clause of the Constitution,[5] *i.e.*, that maritime commerce depends upon national and international harmony and uniformity in the law for its efficient performance. The decision below accords completely with this principle, and thus with the Admiralty Clause.

The Association, in its endeavors to achieve maximum harmony and uniformity in the laws governing maritime commerce, fully supports Appellees' defense of the Admiralty Clause and its underlying principles.

Argument

The Association is in full accord with the statements made in the Brief of the Maritime Law Association of the United States, as *amicus curiae,* and adopts that Association's statements as its own.

In addition, in view of the Association's advocacy of the Admiralty Extension Act, it is particularly concerned with Appellants' attack on the constitutionality of that legislation. It is submitted that the Admiralty Extension Act is plainly constitutional, for the reasons set forth in the Maritime Law Association's Brief (pp. 11-15).

Even before passage of the Admiralty Extension Act, claims for injuries caused by vessels to persons and property on land, or extensions of the land, were subject to the Limited Liability Act.[6] *Richardson* v. *Harmon,* 222 U.S. 96 (1911). The Admiralty Extension Act therefore had no effect on the right of a shipowner to limit his liability under

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[5] CONSTITUTION, ARTICLE III, SECTION 2, CLAUSE 3.

[6] 46 U.S.C. §§ 183-89.

federal law for shoreside injuries caused by his vessel, without his "privity or knowledge". What the Act accomplished was to bring such injuries within the admiralty jurisdiction and to make them subject to the general maritime law. That law therefore governs such substantive questions as the basis of liability and the effect of contributory fault with respect to claims for damage to shoreside property, as well as for damage consummated on navigable waters.

Since the general maritime law is federal, under the Supremacy Clause,[7] no state statute or rule of law in conflict with it is valid.

The Brief *Amicus* of the United States, filed September 1, 1972, while conceding that the Florida Act "is, in our view, ineffective (under the Supremacy Clause Article VI of the Constitution) insofar as it purports to subject shipowners to unlimited liability for damages caused by oil discharged from ships" (pp. 12-13), asserts, surprisingly, that it does not necessarily follow "that this portion of the Florida Act should be declared invalid" (p. 14). The Association respectfully urges that in considering the constitutionality of the Florida Act this Court, if it agrees with the position taken by the Appellees, this Association, the Maritime Law Association, and the United States,[8] should declare *invalid* that which is *ineffective* by reason of the Supremacy Clause of the Constitution.

The Florida legislation, in purporting to impose absolute, as well as unlimited liability for oil pollution damage caused by vessels, directly contravenes the general maritime law, whereunder fault is the basis of liability for

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[7] CONSTITUTION, ARTICLE VI, CLAUSE 2.

[8] The Commonwealth of Massachusetts, in its Brief *Amicus Curiae* (p. 10), likewise "concedes that a shipowner sued *in personam* for oil pollution damages could limit his liability under [the Limited Liability] Act."

property damage. *The Clara*, 102 U.S. 200 (1880). While it is true that the liability provisions of the Water Quality Improvement Act [9] govern only liability for United States Government clean-up costs, the statutory exception carved by Congress out of the rule of the general maritime law differs materially from the Florida statute. Under the Water Quality Improvement Act there is no liability if the discharge of oil is caused by one or more of four excepted causes—act of God, act of war, negligence of the Government, or act or omission of a third party—whereas the Florida Act, if held valid, would impose absolute liability for clean-up costs incurred by the State, and for pollution damage suffered by the State or by private parties.

The Association fully agrees with the United States (Brief, p. 19), that "The court below correctly recognized that a vessel's discharge of oil into navigable waters could be considered a maritime tort, even if the injury were consummated on land". But the issue before this Court is not whether liability for water pollution damage caused by vessels should be absolute, or strict, or based on fault. Rather, it is whether state legislation may validly establish the basis of liability. The answer is plainly in the negative. Under the Admiralty Clause of the Constitution, it is a federal, and not a state prerogative, to determine what the basis of liability for maritime torts should be.

Affirmance of the decision below would not in any sense be a retreat from a concern with ecology; on the contrary, it would advance the cause by clarifying that except in areas of purely local concern, it is the responsibility of the Federal Government to deal with maritime matters, including pollution from vessels. Such clarification should expedite the handling of maritime pollution problems and eliminate useless and expensive duplication of effort and shifting of responsibility.

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[9] 33 U.S.C. §§ 1161-75.

The law to be applied in determining liability for maritime torts cannot vary from state to state, but must be in accord with the general maritime law of the United States. *See* Brief of Appellees American Institute of Merchant Shipping, *et al.*, pp. 13-25. The Association has been in the forefront of the movement to encourage adoption of uniform laws by state legislatures in areas wherein the states are supreme. This laborious task is, happily, unnecessary in the case of the maritime law, since the Admiralty Clause not only makes nation-wide uniformity possible but mandatory.

While the interests of Appellees and of course those of the Maritime Law Association are primarily maritime, the American Bar Association's large, nationwide membership represents interests of every conceivable type. The Association is in complete agreement with Appellees and the Maritime Law Association that a constitutionally sound resolution of the question of the relationship between federal and state powers in the maritime field is of the utmost importance. Affirmance of the decision below would accomplish such a resolution by continuing uniform federal control of maritime commerce, while leaving to the individual states control over waters completely within their boundaries and over land-based sources of water pollution.

CONCLUSION

This Honorable Court should affirm the decision below.

Dated: Cleveland, Ohio
September 22, 1972

Respectfully submitted,

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